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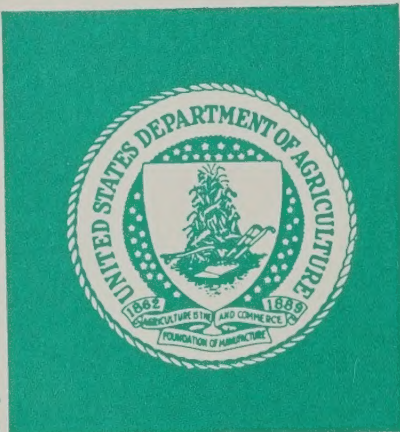
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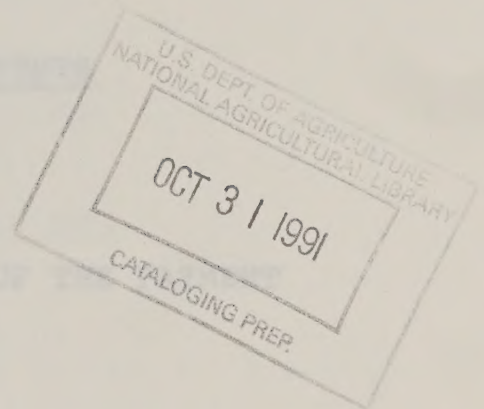
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I. DISCUSSION OF CURRENT APPLICATION OF  
LIMITATION.

II. EXAMPLES OF TYPES OF FARM ORGANIZATIONS THAT  
EFFECTIVELY AVOID THE APPLICATION OF THE PAYMENT  
REPORT TO CONGRESS BY THE SECRETARY OF AGRICULTURE

III. PROPOSED REVISIONS WITH RESPECT TO THE PAYMENT LIMITATION.

IV. IMPLEMENTATION OF THE MAXIMUM PAYMENT LIMITATION

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V. REVIEW OF AMENDMENTS TO SECTION 1041 OF THE FOOD  
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# I. DISCUSSION OF CURRENT APPLICATION OF THE PAYMENT LIMITATION

## A. MANNER IN WHICH "PERSON" DETERMINATIONS ARE MADE

The Administrator of the Agricultural Stabilization and Conservation Service (ASCS) has been delegated the responsibility of implementing the maximum payment limitation requirement. In order to determine the amount of annual farm program payments a "person" is receiving, ASCS must determine all possible sources through which an individual or entity may be receiving farm program payments. Therefore, producers are required to annually submit information to the local county Agricultural Stabilization and Conservation (ASC) committees detailing all of their interest in farming operations. Forms have been developed for collecting the information needed to make "person" determinations. These forms are as follows:

<u>Number</u>	<u>Title</u>	<u>Appendices</u>
ASCS-561	Farm Operating Plan for Payment Limitation Review (Individual)	C
ASCS-561-A	Farm Operating Plan for Payment Limitation Review for a Limited Partnership, Corporation, Estate or Trust	D
ASCS-561-B	Farm Operating Plan for Payment Limitation Review for Joint Venture or General Partnership	E





Producers must file these forms with the local county ASC committee whenever there is a change in the producer's farming operation from the previous year. If there has been no change, the producer must submit a signed statement to that effect.

Initial "person" determinations are made by the county ASC committee. A producer may appeal a county ASC committee determination to the State ASC committee and ultimately to the Deputy Administrator, State and County Operations, ASCS in accordance with the Administrative Appeal Regulations, 7 CFR Part 780.

B. OVERVIEW OF REGULATIONS GOVERNING THE APPLICATION OF THE PAYMENT LIMITATION.

1. General. The regulations implementing the payment limitation focus primarily on the definition of a "person." Each producer meeting the definition of a "person" may be eligible to receive the maximum level of annual commodity payments allowed by section 1001 of the Food Security Act of 1985, as amended. The fundamental precept of the regulations is that each producer determined to be a "person" for payment limitation purposes must:

- (a) have a separate and distinct interest in the land or the crop involved,



(b) exercise separate responsibility for such interest,  
and

(c) be responsible for the cost of farming related to  
such interest from a fund or account separate from  
that of any other individual or entity.

2. Treatment of Individuals or Entities. In applying the  
basic concept set forth in item 1 above, the regulations  
further provide for the treatment of individuals or entities  
as follows:

(a) Entities or joint operations are not considered to  
be a "person". Generally, a partnership, joint venture,  
tenant-in-common, or joint tenant is not considered as a  
"person" but each individual or other legal entity who shares  
in the proceeds derived from farming by such joint operations  
is considered to be a separate person. However, each  
individual or other legal entity who shares in the proceeds  
derived from farming by such joint operation is not  
considered to be a separate person unless the individual or  
other legal entity is actively engaged in the farming  
operations of the partnership or other joint operation.

An individual or other legal entity is to be considered as  
actively engaged in the farming operation only if its  
contribution to the joint operation is commensurate with its  
share in the proceeds derived from farming by such





joint operation. Members of the partnership or joint venture must furnish satisfactory evidence that their contributions of land, labor, management, equipment, or capital to the joint operation are commensurate with their claimed shares of the proceeds. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual.

If the contribution consists substantially of capital, such capital must have been contributed directly to the joint operation by the individual or other legal entity and not acquired as a result of: (i) a loan made to the joint operation, (ii) a loan which was made to such individual or other legal entity by the joint operation or any of its members or related entities, or (iii) a loan made to such individual or other legal entity which was guaranteed by the joint operation or any of its members or related entities.

(b) A corporation (including a limited partnership) is considered to be one "person", and an individual stockholder of the corporation may be considered to be a separate "person" to the extent that such stockholder is engaged in the production of the crop as a separate producer and otherwise meets the requirements of the regulations. However, an individual stockholder or legal entity that owns more





than 50 percent of the stock of a corporation (including the stock owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) shall be combined with the corporation for the purpose of applying the payment limitation.

Where the same two or more individuals or other legal entities own more than 50 percent of the stock in each of two or more corporations, all such corporations are combined for the purpose of applying the payment limitation.

(c) An estate or irrevocable trust is considered to be a "person" except that, where two or more estates or irrevocable trusts have common beneficiaries or heirs (including spouses and minor children) with more than a 50-percent interest, all such estates or irrevocable trusts are considered to be combined.

An individual heir of an estate or beneficiary of a trust may be considered as a separate "person" apart from the trust or estate to the extent that such heir or beneficiary is engaged in the production of crops as a separate producer and otherwise meets the requirements of the regulations. However, a sole heir or beneficiary of an estate or irrevocable trust shall be combined with the estate or trust.



Where an irrevocable trust or an estate is a producer on a farm and one or more of the beneficiaries or heirs of such trust or estate are minor children, the minor children's pro rata share of the program payments made to the trust or estate is attributed to the parent of the minor children, unless such minor children are determined to be "independent minors." (See subparagraph (f), infra.)

A revocable trust is not considered as a separate "person" from the grantor.

(d) Each individual club, society, fraternal or religious organization is considered to be a separate "person" to the extent that each such club, society, fraternal or religious organization is engaged in the production of crops as a separate producer and otherwise meets the requirements of the regulations.

(e) A husband and wife are considered as one "person."

(f) Minor children and their parents or guardians (or other person responsible for them) are considered to be one "person", except that the minor child may be considered to be a separate "person" if such minor is determined to be "independent." A minor child will be determined to be





independent if such minor child is a producer on a farm in which the parents or guardian or other person responsible for the minor child (including any entity in which the parents or guardian or other person responsible for the child has a substantial interest, i.e., more than a 20-percent interest) takes no part in the operation of the farm (including any activities as a custom farmer) and owns no interest in the farm or in any portion of the production on the farm and if such minor child:

(i) Is represented by a court-appointed guardian who is required by law to make a separate accounting for the minor and ownership of the farm is vested in the minor child, or

(ii) Has established and maintains a different household from the minor child's parents or guardian and personally carries out the actual farming operations on the farm for which there is a separate accounting, or

(iii) Has a farming operation as a result of the minor child's being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor child.





A "person" is considered to be a minor child until attaining 18 years of age. Court proceedings conferring majority on a person under 18 years of age do not change such person's status as a minor for purposes of applying the payment limitation regulations.

3. Substantive Change Rule.

The payment limitation regulations recognize that persons may exercise their right, under law, to divide, sell, transfer, rent, or lease their property. Any change in the farming operations that would otherwise serve to increase the number of persons for application of the payment limitation must be bona fide and substantive.

As examples, a substantive change includes: a substantial increase or decrease in the size of the farm by purchase, sale, or lease; a substantial increase or decrease in the size of allotment by purchase, sale or lease; a change from a cash lease to a share lease or vice versa; and dissolution of an entity such as a corporation or partnership.



Examples of the types of changes that would not be considered as substantive are the following:

Example 1:

A corporation is owned equally by four shareholders. The corporation owns land, buildings, and equipment and in the prior year carried out substantial farming operations. Three of the shareholders propose forming a partnership which they would own equally. The partnership would cash lease land and equipment from the corporation with the objective of having the three partners considered to be separate "persons" for purposes of applying the payment limitation.

The formation of such a partnership and the leasing of land from a corporation in which they hold a major interest would not constitute a substantive and bona fide change in operations. Therefore, the corporation and the partners would be limited to a single payment limitation.

Example 2:

Three individuals each have individual farming operations which, if continued unchanged, would permit them to have a total of three payment limitations. The three individuals propose forming a corporation which they would own equally. The corporation would then cash lease a portion of the





farmland owned and previously operated by the individuals with the objective of having the corporation considered as a separate "person" for purposes of applying the payment limitation. The formation of such a corporation and the leasing of land from the stockholders would not constitute a substantive and bona fide change in operations. Therefore, the corporation and the three individuals would be limited to three payment limitations.

4. Custom Farming. Custom farming is the performance of services on a farm such as land preparation, seeding, cultivating, applying pesticides, and harvesting for hire with remuneration on a unit of work basis, except that, for the purpose of applying the payment limitation, the harvesting of crops and the application of agricultural chemicals by firms regularly engaged in such businesses are not regarded as custom farming.

A person performing custom farming shall be considered to be separate from the person for whom the custom farming is performed only if:

(a) The compensation for the custom farming is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and



(b) the person performing the custom farming (and any other entity in which such person has more than a 20-percent interest) has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the crop, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or any other similar capacity.

A person having more than a 20-percent interest in any legal entity performing custom farming is considered as being separate from the person for whom the custom farming is performed only if:

(a) The compensation for the custom farming service is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and

(b) the person having such interest in the legal entity performing the custom farming has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing



(b) The owner

any other person, in

20-per-

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farm, or (1) in the

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capacity.

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area and (b) in no way interferes with the owner's

crop produced, and

(d) the person having such interest in the land

activity period during the custom farming has no interest

directly or indirectly, (1) in the crop or the land or

making any risk in the production of

in the proceeds of the crop, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or in any other similar capacity.

in the proceeds of the crop, standing or growing  
financing of the crop. (ii) in the allotment on the  
or (iii) in the case as landlord, landlord,  
holder, trustee, licensee, partner, agent,  
partner, tenant, shareholder, or in any other similar

## II. EXAMPLES OF TYPES OF FARM ORGANIZATIONS THAT EFFECTIVELY AVOID THE APPLICATION OF THE PAYMENT LIMITATION

While the current payment limitation rules appear to be rather restrictive, innovative individuals have found ways to organize or reorganize in order to increase the number of "persons." The following are examples of the types of farm organizations that effectively avoid the application of the payment limitation by increasing the number of "persons" on a farm without actually increasing the number of individuals who are involved on a daily basis in the farming operation. These examples were developed directly from case files.

### A. GENERAL PARTNERSHIPS, JOINT VENTURES, AND OTHER JOINT OPERATIONS.

General partnerships and joint ventures have been created with large numbers of partners who have contributed small amounts of capital and who have very limited knowledge of the make-up of the partnership or of the farming operation.

These partners may be individuals or, as is often the case, a combination of individuals and corporations. The stockholders of the corporation are usually a combination of



OF TYPES OF FARM ORGANIZATIONS THAT EXIST

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GENERAL PARTNERSHIPS, JOINT VENTURES, AND OTHER JOINT

Partnerships and joint ventures have been created  
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amounts of capital and who have very limited knowledge of the  
operation of the partnership or of the farming operation.  
Partners may be individuals or, as is often the case, a  
combination of individuals and corporations. The  
holder of the corporation are usually a combination of

the other partners. The general partnerships and joint ventures sometimes hire one or more of the partners to provide all management and labor (or they may hire custom farmers) and lease all the land and equipment from one or more of the partners.

Example 1: The So-called Mississippi Christmas Tree

In crop year 1986, Abe, Bill, Claude, Dick, Emily, and Frank farmed as individuals.

In crop year 1987, Abe, Bill, Claude, Dick, Emily, and Frank become stockholders in the following corporations in which each stockholder owns 50 percent of the stock:

A & B, Inc.	B & C, Inc.	C & E, Inc.
A & C, Inc.	B & D, Inc.	C & F, Inc.
A & D, Inc.	B & E, Inc.	D & E, Inc.
A & E, Inc.	B & F, Inc.	D & F, Inc.
A & F, Inc.	C & D, Inc.	E & F, Inc.

The 15 corporations and the 6 individuals then form a joint venture in which each participates on an equal basis.

Each member of the joint venture contributed \$30,000 of capital to the joint venture.

Abe and Claude leased land to the joint venture. The joint venture also leased land from third parties.



Abe, Bill, and Claude leased equipment to the joint venture and also provided management services to the joint venture for which they received an annual salary of \$48,000 each.

This reorganization has increased the number of "persons" in this operation from six in 1986 to 21 in 1987 even though only six individuals are actually involved.

Example 2: Partnership with Passive Investors.

A producer subleased a portion of his farming operation to a newly created 18 member general partnership. None of the partners had previously farmed program crops. Each partner contributed \$5,000. The partnership hired a manager. None of the partners were actively engaged in management of the farming operation and did not perform any labor. The crops were custom farmed. The partners in the partnership were eligible for 18 payment limitations.

B. CORPORATIONS.

A separate corporation for payment limitation purposes can be formed for a nominal fee in most States (as low as \$300). If the corporation has at least two stockholders, with no shareholder





owning over 50 percent of the stock in the corporation, the shareholders can take advantage of a loop hole in the implementation of the limitation. The corporate provisions set forth in section 1001(5) of the Food Security Act of 1985 and the payment limitation regulations enable all shareholders owning 50 percent or less of the stock in a corporation to be "shielded" from any payments received by the corporation. By using a combination of two stockholders per corporation, three individuals can form three corporations, five individuals can form ten corporations, six individuals can form 15 corporations and so on. Farm program payments received by the corporation(s) are not attributed to the shareholders.

The corporations may hire another producer to custom farm the land for them or may operate the farm through a general partnership or joint venture (see Example 1 under General Partnerships, Joint Ventures, and Other Joint Operations).

C. MINOR CHILDREN.

Minor children are usually combined with their parents for payment limitation purposes. However, an irrevocable trust can be established with minor children as beneficiaries. If the parents do not have any involvement in the farm, crop, or farming operation of the trust, the parents and the trust can be separate "persons" for payment limitation purposes.



Minor children are establishing residences with other relatives to become separate "persons" from their parents. In some cases, parents are relinquishing their legal guardianship to other individuals so that the minor children become eligible for separate maximum payment limitations.

Example 1: Irrevocable Trust.

An irrevocable trust is established for two minor children. The father is the trustee of the trust. The corpus of the trust is farmland. The trust hires custom farmers to perform management and labor services on the farm. The trust and the father are two separate "persons" for payment limitation purposes.

Example 2: Transfer of Guardianship.

Parents relinquish all rights of guardianship over their two minor children. Three unrelated individuals are made guardians of the children. The minor children have farming operations. Even though the minor children continue to live with their parents, the minor children and the parents are considered to be separate "persons" for payment limitation purposes.

D. SUBSTANTIVE CHANGE

A change in the number of "persons" for payment limitation purposes from the previous year is permitted only if there is a





bona fide and substantive change in the farming operation. However, the creation of any number of "persons" may be based upon only one such substantive change. Currently, a substantial decrease in the size of the farming operation will be considered to be a substantive change and can, therefore, be used to increase the number of "persons" for payment limitation purposes. Any change (increase or decrease) in the size of the farming operation (approximately 20 percent in acres from the previous year with compatible crop acreage bases) is considered to be a substantive change without consideration of the number of "persons" that are being added to the farming operation as a result of such change.

Example 1: Decrease in Acreage.

A farming operation contained 1,000 acres. In the previous year, the operator was an individual with one payment limitation. The farming operation is decreased by 200 acres and the number of additional "persons" for payment limitation purposes that can be created is limitless. The same situation exists when the converse (200 acre increase) occurs.



Example 2: Share to Cash Rental.

A farming operation consisted of 1,000 acres. In the previous year, the operator was an individual who share-leased the land from third parties. By changing the leases to cash leases, a substantive change has occurred and additional "persons" can be added. For example, a 15 member partnership may be formed to operate the land and rent the equipment from the individual who operated the land in the previous year. There would be 15 persons for payment limitation purposes.

E. CUSTOM FARMING.

A producer, in order to create additional "persons", can organize a farming operation into a partnership with most of the partners being passive investors who have contributed only cash. Such producer then sells or leases the producer's equipment to a custom farming corporation in which such producer has an interest. The partnership hires the custom farming corporation to perform services on the farm operated by the partnership. Payments made to the additional "persons" within the partnership are funneled back, in part, to the producer through the custom farming corporation.



Report of the Board.

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partnership may be formed to operate the land and rent  
from the individual who operated the land in  
four years. There would be 12 persons for payment  
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#### CUSTOM FARMING.

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Example 1: Custom Farming and Passive Investors.

A producer rented a portion of his farm to four individuals that had not previously farmed. This producer together with the four individuals created a corporation with each owning 20 percent of the corporate stock. All of the equipment owned by the producer was sold or title was transferred to the new corporation. The corporation custom farmed for the five individuals and there are five payment limitations. If the producer originally owning the equipment had custom farmed for the other four individuals there would be one payment limitation because the producer owns the land rented to the four individuals.

Example 2: Custom Farming and Creation of Partnerships.

Individual A farmed as an operator/owner in the previous year. In the current year, individual A rents all of his farm equipment to his former manager. The former manager will custom farm for three newly created partnerships (each having three partners that do not have other farming interests) and two individuals that had not previously farmed who rent the land from individual A. The number of "persons" for payment limitation purposes has increased from one to 11.

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### III. PROPOSED REVISION OF APPLICATION OF PAYMENT LIMITATION.

As the foregoing discussion illustrates, current law allows farm operations to be organized in such a way that individual producers receive more than the maximum amount of annual payments specified by Congress. Further, in many instances, farm program payments are being made to individuals who are not the intended beneficiaries of the federal farm programs.

The provisions of current law enable all shareholders owning 50 percent or less of the stock in a corporation to be "sheltered" from having any farm program payments received by the corporation attributed to them. Differing treatment of joint operations such as general partnerships and joint ventures on the one hand, and corporations, limited partnerships, estates and trusts on the other, has resulted in farm reorganizations for the sole purpose of creating more "persons" for payment limitation purposes. The ease in which partners can be added to general partnerships and qualify as additional "persons" has led to an increase in passive investors in farming operations--persons having little or nothing to do with the actual production of the commodity, but who have made a capital contribution (such as land, cash, or equipment) to the partnership solely because of the promise of receiving some portion of federal payments.





As a result of this review, the Department has developed several major proposals to revise the manner in which the maximum payment limitation is applied. These proposals are designed to improve the effectiveness of our farm programs by preventing large operators from receiving more than the prescribed maximum limit in farm program payments and by ensuring that the payment limitation is implemented so that primary emphasis is placed on the payments being received by actual farmers.

These proposals center around three principles:

- (1) Members of farming entities, whether the entity is a corporation, general partnership, or other type of organization, should be treated consistently;
- (2) A mere passive investor in a farming operation should not be considered to be "actively engaged in farming" and should not, therefore, be considered to be a separate "person"; and
- (3) Payments to an entity should be attributed to each individual and entity that has an interest in the entity receiving the payment in proportion to such individual's and entity's interest.

Other, less significant revisions have also been developed. They include provisions designed: (1) to discourage the use of minor children as a means to avoid the limitation; (2) to provide that entities with similar members be combined



whenever such members have a 50% or more interest in each of the entities; and (3) to limit the type of changes in farming operations that will justify the creation of additional "persons".

These proposals represent a comprehensive plan designed to make the implementation of the maximum payment limitation more effective and more equitable. As a prerequisite to implementation of the major proposals of this plan, section 1001(5) of the Food Security Act of 1985 would have to be amended to eliminate the preferential treatment of corporations and limited partnerships currently provided for by that statute. A bill amending the Food Security Act of 1985 is included in this report for your consideration (See Item IV).

Piecemeal implementation of these proposals would be ineffectual. A change in one aspect of the current application of the limitation could adversely affect some types of organizations while not affecting others. Any adverse impact on one type of organization would simply cause producers to reorganize into other forms of operation in order to avoid any negative impacts.





A. APPLICATION OF THE LIMITATION TO GENERAL PARTNERSHIPS,  
JOINT VENTURES, JOINT TENANTS, TENANTS-IN-COMMON,  
CORPORATIONS, LIMITED PARTNERSHIPS, TRUSTS AND ESTATES.

1. Background: Currently, general partnerships, joint ventures, joint tenants, and tenants-in-common are not considered to be separate persons for the purpose of applying the maximum payment limitation. Each individual member of such joint operations that is determined to be actively engaged in farming is considered to be a separate person. The maximum amount of payments that such joint operations can receive increases with each additional member. As a result, general partnerships and other joint operations have been created with large numbers of members, each providing small individual capital investments and having limited knowledge of the makeup of the joint operation or of the farming operations.

Corporations, limited partnerships, trusts, and estates are considered to be separate "persons". Shareholders, beneficiaries, or limited partners may be considered to be a separate "person" from the corporation, trust, estate, or limited partnership, respectively, if they are carrying out farming operations independently of the corporation, limited partnership, trust, or estate and if they meet the other requirements of the regulations.



This differing treatment of joint operations (i.e., general partnerships, joint ventures, joint tenants, and tenants-in-common) and corporations, limited partnerships, trusts, and estates causes unnecessary confusion, makes the joint operation form of organization more preferable for producers wishing to pool their resources in a larger operation, and discourages the use of a corporate form of organization for a family farming operation.

2. Proposal:

(a) Similar treatment for all entities. Treat all entities (i.e., corporations, limited partnerships, trusts, estates, general partnerships, joint ventures, and other entities and associations) similarly for the purpose of applying the payment limitation.

With one exception, the application of the payment limitation to such entities would be based upon the number of members of the entity who are determined to be actively engaged in farming. An exception would be made for an entity that is conducting a farming operation separate and independently of its members. Such an entity would be considered to be a "person" for the purpose of applying the payment limitation.

Because all of these entities will be treated similarly, no





one method of farm organization will be encouraged. Producers will have more flexibility to organize their farming operation in the manner in which they choose.

(b) Actively engaged in farming. Redefine "actively engaged in farming" to make it more difficult for a member of an entity to qualify as a separate person. In order to be considered to be "actively engaged in farming" the member of the entity would have to independently make a significant contribution (determined based upon the total value of the farming operation) of the following:

- (1) land, cash, or equipment; and
- (2) management or labor.

This revision will discourage the addition of members solely for the purpose of increasing the number of "persons" by making their addition more difficult and expensive. Further, this provision ensures that persons receiving payments are actually involved in the farming operation.



### 3. Examples:

#### Example 1:

##### Partnership X

A contributes	land, equipment, management	
B contributes	equipment, management	
C contributes	equipment, management, labor	
D contributes	land	
E contributes		cash
F contributes		cash
G contributes		cash
H contributes		cash
I contributes		cash

- The partnership farms land contributed by A and D as well as other lands leased from third parties.
- All contributions are "significant".

#### RESULT:

- This partnership would have 3 persons for payment limitation purposes.
- Only A, B, and C have contributed both (1) land, cash, or equipment and (2) management or labor.
- The remaining 6 partners will not be considered to be actively engaged in farming and will not be "persons".

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#### Example 2:

##### Corporation X

Father	contributes equipment, management, labor	=	20% stock
Mother	contributes	cash =	20% stock
Son A	contributes equipment, management, labor	=	20% stock
Son B	contributes	cash =	20% stock
Daughter C	contributes	cash =	20% stock

- The corporation has title to the land farmed by this operation.
- None of the children are minors.
- All contributions are significant.
- Assume a statutory payment limitation of \$50,000.

#### RESULT:

- Corporation X would be composed of 2 persons for payment limitation purposes: Father and Son A.
  - Only Father and Son A would be considered to be actively engaged in farming.
  - Corporation X would be eligible receive a maximum of \$100,000 in commodity program payments.
-





Example 3:

CORPORATION X

FATHER	exchanged land	25% of stock
MOTHER	exchanged land	25% of stock
SON A	exchanged equipment, cash	20% stock
SON B	exchanged cash	15% stock
DAUGHTER C	exchanged cash	15% stock

- FATHER & SON A receive salary from CORP. X for labor and management.
- None of the children are minors.
- FATHER sold equipment to CORPORATION X and took back a note.
- All contributions are significant.
- Assume a statutory payment limitation of \$50,000.

RESULT:

- None of the shareholders would be considered to be actively engaged in farming.
- CORPORATION X would be considered to be a "person" and would be eligible to receive a maximum of \$50,000 in commodity payments.
- Each shareholder could farm independently and be considered to be a "person" with respect to their independent operations.

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B. ATTRIBUTION OF PAYMENTS

1. Background: The regulations currently attribute the payments of corporations, limited partnerships, trusts and estates to their members in an inconsistent fashion. The result is some persons being unfairly penalized for their participation in these entities while others effectively avoid the application of the payment limitation.

2. Proposal: The payments received by an entity would be attributed to the members of the entity based upon the member's interest in the entity. The Secretary would have discretion to determine not to attribute payments to a



member of an entity if it is determined that (a) such member has less than a 10 percent interest in the entity and (b) attribution of payments to such entity would have little or no impact on the implementation of the payment limitation.

This revision will provide for consistency in the treatment of all of the members of various entities. It is necessary to provide the Secretary with discretion to determine not to attribute payments because, in certain instances (such as a publicly held corporation that receives \$50,000 in commodity program payments but has 3,000 shareholders), such attribution would constitute an unreasonable administrative burden while having very little positive impact on the implementation of the payment limitation.

### 3. Examples:

#### Example 1:

##### TRUST X

A = 25%  
B = 25%  
C = 25%  
D = 25%

- TRUST X farms Blueacre (2500 acres) with a potential of receiving a maximum of \$125,000 in commodity program payments.
- None of the beneficiaries of TRUST X are actively engaged in farming with respect to the farming operation carried out by TRUST X.
- A farms Blackacre independently of TRUST X with a potential of receiving a maximum of \$12,500 in commodity program payments.
- B farms Greenacre independently of TRUST X with a potential of receiving a maximum of \$40,000 in commodity program payments.
- Assume a statutory payment limitation of \$50,000.





RESULT:

- TRUST X and beneficiaries must determine how payments will be allocated.
  - If TRUST X receives \$50,000, then:
    - A may receive \$12,500 on own farm; and
    - B may receive only \$37,500 on own farm.  
(\$50,000 - \$12,500 [share from trust])
  - If A receives \$12,500 and B receives \$40,000 on their own farms, then:
    - TRUST X may receive only \$40,000 (B is only eligible to receive \$10,000 more in payments, therefore the payments made to TRUST X that are attributed to D must not exceed \$10,000. TRUST X may only receive an amount equal to \$10,000 divided by 25%.

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Example 2:

CORPORATION Z

A = 20%  
B = 20%  
C = 20%  
D = 20%  
E = 20%

- CORPORATION Z farms Redacre with a potential of \$125,000 in payments.
- None of the beneficiaries of CORPORATION Z are actively engaged in farming with respect to the farming operation carried out by CORPORATION Z.
- A farms Greenacre independently of CORPORATION Z with a potential of receiving a maximum of \$60,000 in commodity program payments.
- Assume a statutory limitation on payments of \$50,000 per person.

RESULT:

- CORPORATION Z and stockholders must determine how payments will be allocated.
  - If A receives payments on A's independent operation equalling \$50,000, then:
    - CORPORATION Z will be unable to receive any payments because 20% of any payments made to the corporation would be attributed to A, who has already reached the maximum payment limitation.
  - If CORPORATION Z receives payments on its farming operation equalling \$50,000, then:
    - A will be able to receive payments on A's independent operation equalling \$40,000.
-



Example 3:

CORPORATION Z

A = 20%  
B = 20%  
C = 20%  
D = 20%  
E = 20%

- CORPORATION Z farms Redacre with a potential of receiving a maximum of \$175,000 in commodity program payments.
- A, B, and C are determined to be actively engaged in farming with respect to the farming operation carried out by CORPORATION Z.
- A farms Greenacre independently of CORPORATION Z with a potential of receiving a maximum of \$60,000 in commodity program payments.
- Assume a statutory limitation on payments of \$50,000 per person.

RESULT:

- CORPORATION Z would be comprised of 3 persons for payment limitation purposes- A, B, & C.
- CORPORATION Z and stockholders must determine how payments will be allocated.
- If A receives payments on A's independent operation equalling \$50,000, then:
  - CORPORATION Z will be unable to receive any payments because 20% of any payments made to the corporation would be attributed to A, who has already reached the maximum payment limitation.
- If CORPORATION Z receives payments on its farming operation equalling \$150,000, then:
  - A will be able to receive payments on A's independent operation equalling \$20,000. (A's \$50,000 - \$30,000 [A was attributed 20% of the \$150,000 received by CORPORATION Z] = \$20,000)

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C. COMBINATION OF ENTITIES WITH SIMILAR MEMBERSHIP.

1. Background: The attribution of payments received by the entity to its members might encourage the creation of more entities in order for individuals (or operations) to maintain their previous level of payments or to increase their level of payments. The creation of entities solely for the purpose of obtaining payments needs to be





discouraged.

2. Proposal: Where the same two or more persons have 50% interest or more in each of two or more entities all such entities shall be considered to be one person for payment limitation purposes.

This proposal is new only with respect to joint operations. A similar rule already exists with respect to corporations, trusts, estates and limited partnerships. The percentage interest necessary to trigger this rule is the central issue and is reduced from "over 50%" to 50% or more.

3. Example:

A&B, INC. )	
A&C, INC. )	
A&D, INC. )	JOINT VENTURE FARMS
B&C, INC. )	
B&D, INC. )	
C&D, INC. )	

- A, B, C, & D each have independent farming operations.
- The four individuals form the above-listed 6 corporations which farm, as JOINT VENTURE FARMS, other land leased from a third-party.
- Assume a \$50,000 payment limit.

RESULT:

- All 6 corporations are combined and treated as one "person".
  - All 4 shareholders may conduct their independent operations and be considered to be separate "persons" with respect to those operations. However, the attribution rule would ensure that the 4 shareholders only receive a total of \$200,000 in payments.
-



(B) The regulations issued by the Secretary on December 18, 1970, under section 101 of the Agricultural Act of 1970 (7 U.S.C. 1307) shall be used to establish the percentage ownership of a corporation by the stockholders of such corporation for the purpose of determining whether such corporation and stockholders are separate persons under this section.

(6) The provisions of this section that limit payments to any person shall not be applicable to lands or animals owned by States, political subdivisions, or agencies thereof, so long as such lands are farmed or animals are husbanded primarily in the direct furtherance of a public function, as determined by the Secretary.





# UNITED STATES DEPARTMENT OF AGRICULTURE

## Agricultural Stabilization and Conservation Service

### PAYMENT LIMITATIONS

#### Title 7—Agriculture

#### CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

#### PART 795—PAYMENT LIMITATIONS

#### 795—PAYMENT LIMITATION

##### GENERAL

Reserved]  
applicability.

##### DEFINITION

Definition of the term "person."  
Definitions of other terms.

DETERMINATION WHETHER MULTIPLE INDIVIDUALS OR OTHER ENTITIES CONSTITUTE ONE SEPARATE PERSONS

Timing for determining status of per-

multiple individuals or other entities.  
Entities or joint operations not con-

sidered as a person.  
Corporations and stockholders.

Estate or trust.

Club, society, fraternal or religious  
organization.

Husband and wife.

Minor children.

Other cases.

##### FARMING OPERATIONS

Changes in farming operations.

Determination whether agreement  
share lease or a cash lease.

Custom farming.

##### SCHEME OR DEVICE

Scheme or device.

##### MISCELLANEOUS

Joint and several liability.

Appeals.

Interpretations.

Paperwork Reduction Act assigned  
number.

##### GENERAL

[Reserved]

Applicability.

The provisions of this part are  
able to payments when so pro-  
by the individual program regu-  
s under which the payments are  
The amount of the limitation  
be as specified in the individual  
in regulations.

The limitation shall be applied to  
payments for a commodity for a  
year.

(c) The limitation shall not be  
applicable to payments made to States,  
political subdivisions, or agencies  
thereof for participation in the programs  
on lands owned by such States, political  
subdivisions, or agencies thereof so long  
as such lands are farmed primarily in  
the direct furtherance of a public  
function. However, the limitation is  
applicable to persons who rent or lease  
land owned by States, political  
subdivisions, or agencies thereof.

(d) The limitation shall not be  
applicable to payments made to Indian  
tribal ventures participating in the  
programs where a responsible official of  
the Bureau of Indian Affairs or the  
Indian Tribal Council certifies that no  
more than the program payment  
limitation shall accrue directly or  
indirectly to any individual Indian and  
the State committee reviews and  
approves the exemption.

##### DEFINITIONS

#### § 795.3 Definition of the term "person".

Subject to the provisions of this  
part, the term "person" shall mean an  
individual, joint stock company, corpo-  
ration, association, trust, estate, or  
other legal entity. In order to be con-  
sidered a separate person for the pur-  
pose of the payment limitation, in ad-  
dition to the other conditions of this  
part, the individual or other legal  
entity must:

(a) Have a separate and distinct in-  
terest in the land or the crop involved.

(b) Exercise separate responsibility  
for such interest, and

(c) Be responsible for the cost of  
farming related to such interest from  
a fund or account separate from that  
of any other individual or entity.

#### § 795.4 Definitions of other terms.

In the regulations in this part and in  
all instructions, forms, and documents  
in connection therewith, all words and  
phrases, other than the term  
"person", shall have the meanings as-  
signed to them in the regulations gov-  
erning reconstitutions of farms, allot-  
ments, and bases, Part 719 of this  
chapter, as amended.

DETERMINATION WHETHER MULTIPLE  
INDIVIDUALS OR OTHER ENTITIES CON-  
STITUTE ONE OR SEPARATE PERSONS

#### § 795.5 Timing for determining status of persons.

Except as otherwise set forth in this  
part, the status of individuals or entities  
as of March 1, or such other date as may  
be determined and announced by the  
Administrator shall be the basis on  
which determinations are made in  
accordance with this part for the year  
for which the determination is made.

#### § 795.6 Multiple individuals or other entities.

The rules in §§ 795.5 through 795.16  
shall be used to determine whether  
certain multiple individuals or legal  
entities are to be treated as one person  
or as separate persons for the purpose  
of applying the limitation. In cases in  
which more than one rule would  
appear to be applicable, the rule  
which is most restrictive on the  
number of persons shall apply.

#### § 795.7 Entities or joint operations not considered as a person.

A partnership, joint venture, ten-  
ants-in-common, or joint tenants shall  
not be considered as a person but, not-  
withstanding the provisions of § 795.3,  
each individual or other legal entity  
who shares in the proceeds derived  
from farming by such joint operations  
shall be considered a separate person,  
except as otherwise provided in this  
part, and shall be listed as a producer  
for payment purposes on program doc-  
uments. The payment shares listed on  
the program documents for each indi-  
vidual or other legal entity shall be  
the same as each individual or other  
legal entity shares in the proceeds de-  
rived from farming by such joint oper-  
ation. Notwithstanding the foregoing,  
each individual or other legal entity  
who shares in the proceeds derived  
from farming by such joint operation  
shall not be considered as a separate  
person unless the individual or other  
legal entity is actively engaged in the  
farming operations of the partnership  
or other joint operation. An individual  
or other legal entity shall be consid-  
ered as actively engaged in the farm-  
ing operation only if its contribution  
to the joint operation is commensu-  
rate with its share in the proceeds de-  
rived from farming by such joint oper-  
ation. Members of the partnership or  
joint venture must furnish satisfac-  
tory evidence that their contributions  
of land, labor, management, equip-  
ment, or capital to the joint operation  
are commensurate with their claimed  
shares of the proceeds. A capital con-





rice under section 107D(b), 105C(b), 103A(b), or 101A(g), respectively, of the Agricultural Act of 1949; and

(vi) any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively, of the Agricultural Act of 1949.

Such terms shall not include loans or purchases, except as specifically provided for in this paragraph.

(C) The total amount of loans on a crop of honey that a person may have outstanding at any one time under the annual program established for such crop under the Agricultural Act of 1949 may not exceed \$250,000 less the amount of payments, as described in paragraph (1) and subparagraphs (A) and (B) of this paragraph, received by such person for the crop year involved.

(3) Notwithstanding the foregoing provisions of this section, if the Secretary of Agriculture determines that any of the limitations provided for in paragraph (2) will result in a substantial increase in the number or dollar amount of loan forfeitures for a crop of a commodity, will substantially reduce the acreage taken out of production under an acreage reduction program for a crop of a commodity, or will cause the market prices for a crop of a commodity to fall substantially below the effective loan rate for the crop, the Secretary shall adjust upward such limitation, under such terms and conditions as the Secretary determines appropriate, as necessary to eliminate such adverse effect on the program involved.

(4) If the Secretary determines that the total amount of payments that will be earned by any person under the program in effect for any crop will be reduced under this section, any acreage requirement established under a set-aside or acreage limitation program for the farm or farms on which such person will be sharing in payments earned under such program shall be adjusted to such extent and in such manner as the Secretary determines will be fair and reasonable in relation to the amount of the payment reduction.

(5) (A) The Secretary shall issue regulations--

(i) defining the term "person"; and

(ii) prescribing such rules as the Secretary determines necessary to assure a fair and reasonable application of the limitation established under this section.

Such regulations shall provide that the term "person" does not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.





of a specified sum or an amount owned by the individual. If the contribution consists substantially of capital must have been contributed directly to the joint operation of the individual or other legal entity or acquired as a result of (a) a loan made to the joint operation, (b) a loan which was made to such individual or other legal entity by the joint operation or any of its members or relatives, or (c) a loan made to the individual or other legal entity which was guaranteed by the joint operation or any of its members or relatives.

#### Corporations and stockholders.

A corporation (including a limited partnership) shall be considered as one person, and an individual stockholder of the corporation may be considered as a separate person to the extent that such stockholder is engaged in the production of the crop as a separate producer and otherwise meets the requirements of § 795.3, except that a corporation in which more than 50 percent of the stock is owned by an individual (including the individual's minor children, and trusts for the benefit of such minor children), or any legal entity, shall not be considered as a separate person from such individual or legal entity.

Where the same two or more individuals or other legal entities own more than 50 percent of the stock in one or two or more corporations, all corporations shall be considered one person.

The percentage share of the value of the stock owned by an individual or other legal entity shall be determined as of March 1 of the crop year, except that where a stockholder voluntarily acquires stock after March 1 before the harvest of the crop, the value of any stock so acquired shall be included in determining the percentage share of the value of the stock owned by the stockholder. Where there is only one class of stock, a stockholder's percentage share of the value of the outstanding stock shall be determined on the basis of the outstanding stock owned by the stockholder.

If the corporation has more than one class of stock the percentage share of the value of the stock owned by the stockholder shall be determined on the basis of market quotations, and if market quotations are lacking or too unreliable to be recognized the percentage share of the value of the stock shall be determined by the Deputy Administrator on the basis of all relevant factors including the fair market value, including rights and privileges of the stock issues.

(a) An estate or irrevocable trust shall be considered as one person except that, where two or more estates or irrevocable trusts have common beneficiaries or heirs (including spouses and minor children) with more than a 50-percent interest, all such estates or irrevocable trusts shall be considered as one person.

(b) An individual heir of an estate or beneficiary of a trust may be considered as a separate person to the extent that such heir or beneficiary is engaged in the production of crops as a separate producer and otherwise meets the requirements of § 795.3, except that an estate or irrevocable trust which has a sole heir or beneficiary shall not be considered as a separate person from such heir or beneficiary.

(c) Where an irrevocable trust or an estate is a producer on a farm and one or more of the beneficiaries or heirs of such trust or estate are minor children, the minor children's pro rata share of the program payments to the trust or estate shall be attributed to the parent of the minor children except as otherwise provided in § 795.12.

(d) A revocable trust shall not be considered as a separate person from the grantor.

#### § 795.10 Club, society, fraternal or religious organization.

Each individual club, society, fraternal or religious organization may be considered as a separate person to the extent that each such club, society, fraternal or religious organization is engaged in the production of crops as a separate producer and otherwise meets the requirements of § 795.3.

#### § 795.11 Husband and wife.

A husband and wife shall be considered as one person.

#### § 795.12 Minor children.

(a) A minor child and his parents or guardian (or other person responsible for him) shall be considered as one person, except that the minor child may be considered as a separate person if such minor child is a producer on a farm in which the parents or guardian or other person responsible for him (including any entity in which the parents or guardian or other person responsible for him has a substantial interest, i.e., more than a 20-percent interest) takes no part in the operation of the farm (including any activities as a custom farmer) and owns no interest in the farm or allotment or in any portion of the production on the farm, and if such minor child:

(1) Is represented by a court-appointed guardian who is required by law to make a separate accounting for the minor and ownership of the farm is vested in the minor, or

different household from his parents or guardian and personally carries out the actual farming operations on the farm for which there is a separate accounting, or

(3) Has a farming operation resulting from his being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(b) A person shall be considered a minor until he reaches 18 years of age. Court proceedings conferring majority

on a person under 18 years of age will not change such person's status as a minor for purposes of applying the regulations.

#### § 795.13 Other cases.

Where the county committee is unable to determine whether certain individuals or legal entities involved in the production of a commodity are to be treated as one person or separate persons, all the facts regarding the arrangement under which the commodity is produced shall be submitted to the State committee for decision. Where the State committee is unable to determine whether such individuals or legal entities are to be treated as one person or separate persons, all the facts regarding the arrangement under which the farming operation is conducted shall be submitted to the Deputy Administrator for decision.

### FARMING OPERATIONS

#### § 795.14 Changes in farming operations.

(a) Subject to the provisions of this part, a person may exercise his or her right heretofore existing under law, to divide, sell, transfer, rent, or lease his or her property if such division, sale, transfer, rental arrangement, or lease is legally binding as between the parties thereto. However, any document representing a division, sale, transfer, rental arrangement, or lease which is fictitious or not legally binding as between the parties thereto shall be considered to be for the purpose of evading the payment limitation and shall be disregarded for the purpose of applying the payment limitation. Any change in farming operations that would otherwise serve to increase the number of persons for application of the payment limitation must be bona fide and substantive.

(b) A substantive change includes, for example, a substantial increase or decrease in the size of the farm by purchase, sale, or lease; a substantial increase or decrease in the size of allotment by purchase, sale, or lease; a change from a cash lease to a share lease or vice versa; and dissolution of an entity such as a corporation or partnership.





Examples of the types of farming which could not be considered as sub-paragraphs are the following:

**Example 1.** A corporation is owned equally by shareholders. The corporation owns buildings and equipment and in the area carried out substantial farming operations. Three of the shareholders forming a partnership which they own equally. The partnership would use the land and equipment from the corporation with the objective of having the partners considered as separate persons for purposes of applying the payment limitation under the provisions of § 795.7 of the regulations.

Formation of such a partnership and leasing of land from a corporation in which they hold a major interest would not constitute a substantive and bona fide farming operation. Therefore, the corporation and the partners would be limited to the payment limitation.

**Example 2.** Three individuals each have equal farming operations which, if unchanged, would permit them to meet all of three payment limitations.

Three individuals propose forming a corporation which they would own equally. The corporation would then cash lease a portion of the farmland owned and prearranged by the individuals with the objective of having the corporation considered as a separate person for purposes of applying the payment limitation under the provisions of § 795.8 of the regulations. The formation of such a corporation and the leasing of land from the stockholders would constitute a substantive and bona fide farming operation. Therefore, the corporation and the three individuals would be subject to three payment limitations.

**§ 795.15 Determining whether agreement is a cash lease or a share lease.**

**Cash lease.** If a rental agreement contains provisions for a guaranteed minimum rental with respect to the amount of rent to be paid to the landlord or tenant, such agreement shall be considered to be a cash rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

**Share lease.** If a rental agreement contains provisions that require the amount of rent on the basis of the amount of the crop produced or the proceeds derived from the crop, such agreement shall be considered to be a share rental agreement. In addition, the agreement must be customary and reasonable for the area.

## 6 Custom farming.

Custom farming is the performance of services on a farm such as land preparation, seeding, cultivating, applying pesticides, and harvesting for with remuneration on a unit of basis, except that, for the purpose of applying the provisions of this part, the harvesting of crops and application of agricultural chemicals by firms regularly engaged in such businesses shall not be regarded as custom farming. A person performing custom farming shall be considered as being separate from the person for whom the custom farming is performed only if:

(1) The compensation for the custom farming is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and (2) the person performing the custom farming (and any other entity in which such person has more than a 20-percent interest) has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the crop, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or any other similar capacity.

(b) A person having more than a 20-percent interest in any legal entity performing custom farming shall be considered as being separate from the person for whom the custom farming is performed only if:

(1) The compensation for the custom farming service is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and (2) the person having such interest in the legal entity performing the custom farming has no interest, directly or indirectly, (i) in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the crop, granting or guaranteeing the financing of the crop, (ii) in the allotment on the farm, or (iii) in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or in any other similar capacity.

## SCHEME OR DEVICE

### § 795.17 Scheme or device.

All or any part of the payments otherwise due a person under the upland cotton, wheat, feed grain and rice programs on all farms in which the person has an interest may be withheld or required to be refunded if the person adopts or participates in adopting any scheme or device designed to evade or which has the effect of evading the rules of this part. Such acts shall include, but are not limited to, concealing from the county committee any information having a bearing on the application of the rules of this part or submitting false information to the county committee (for example, a set-aside agreement which is entered into that differs from information furnished to the county committee concerning the manner in which program payments are actually shared, concerning the actual facts of a sale, or concerning the transfer of property) or creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

## MISCELLANEOUS

### § 795.20 Joint and several liability.

Where two or more individuals or legal entities, who are treated as one person hereunder, receive payments which in the aggregate exceed the limitation, such individuals or legal entities shall be liable, jointly and severally, for any liability arising therefrom. The provisions of this part requiring the refund of payments shall be applicable in addition to any liability under criminal and civil fraud statutes.

### § 795.21 Appeals.

Any person may obtain reconsideration and review of determinations made under this part in accordance

with the appeal regulations, Part 780 of this chapter, as amended.

### § 795.22 Interpretations.

In interpretations previously issued pursuant to the payment limitation regulations and published at 36 FR 16569, 37 FR 3049, 39 FR 15021 and 41 FR 17527 shall be applicable in construing the provisions of this part.

### § 795.23 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR Part 795) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0096.

### § 795.24 Relief.

If a producer relied on a county committee and/or State committee "person" determination for a crop year and higher reviewing authority makes a more restrictive determination, the Deputy Administrator may grant relief only for such crop year if the producer was not afforded an opportunity to exercise other alternatives with respect to the producer's farming operation and the program provisions and the county committee has determined that the producers acted in good faith based upon the original "person" determination.





# FARM OPERATING PLAN FOR PAYMENT LIMITATION REVIEW FOR AN INDIVIDUAL

1. PROGRAM YEAR

PL 95-198 for wheat, feed grain, upland and ELS cotton, rice, and conservation reserve; Act of April 27, 1935, c. 85, as amended for ACP; PL 95-334 for ECP; and PL 95-313 for FIP authorize the collection of the following data for applying payment limitations. It is needed to avoid payments that exceed limitations. Furnishing this data is voluntary; however, without it we may be unable to establish your maximum eligibility for program payments. The data may be furnished to any agency responsible for enforcing the limitations.

2. HOME ADDRESS OF PRODUCER

3. SSN OR ID NO.

4. COUNTY (IES)

5. Are you under 18 years of age as of March 1 of this program year? (If yes, give date of birth, parent or guardian's name, address, and ID No.)

YES NO

6. If you are a minor, do your parents or guardian have farming interests? (If yes, explain on an attached sheet. Indicate for each individual listed the state and county for each interest and also any entity and ID No. in which they have a farming interest, if the interest is other than as an individual.)

7. Do you, your spouse, or minor children have farming interests not operated by you? (If yes, explain on attached sheet. Include name, ID number, relationship, and whether an adult or minor. Indicate for each individual listed the state and county for each interest, and also any entity and ID in which they have a farming interest, if the interest is other than as an individual.)

8. How is your farming operation this year, how and from whom is the following obtained? (Use reverse side for additional space.)

9. ALL

Owned	Leased	(If leased, complete the following:)	
NAME 1	RELATIONSHIP 2	CROPLAND ACRES 3	\$ PER ACRE OR % CROP SHARE 4

Owned	Leased From Others	Leased To Others	(If leased, complete the following:)	
NAME 1	RELATIONSHIP 2	CROPLAND ACRES 3	\$ PER ACRE OR % CROP SHARE 4	

10. R

11. MANAGEMENT





**FARM OPERATING PLAN FOR PAYMENT LIMITATION REVIEW  
FOR A LIMITED PARTNERSHIP, CORPORATION, ESTATE OR TRUST**

P.L. 99-198 for wheat, feed grain, upland & ELS cotton, rice and conservation reserve; Act of April 27, 1935, c. 85, as amended, for ACP.  
P.L. 95-334 for ECP; and P.L. 95-313 for FIP authorize the collection of the following data for applying payment limitations. It is needed to  
avoid payments that exceed limitations. Furnishing this data is voluntary; however, without it we may be unable to establish your maximum  
eligibility for program payments. The data may be furnished to any agency responsible for enforcing the limitations.

NAME AND ADDRESS OF PRODUCER (Entity)

**3. TYPE OF ENTITY (Check one)**

- A. LIMITED PARTNERSHIP ☐  
 B. CORPORATION ☐  
 C. ESTATE ☐  
 D. REVOCABLE TRUST ☐  
 E. IRREVOCABLE TRUST ☐

**4. COUNTY (IES)****5. DATE ENTITY FORMED****6. ID NO.**

All members having an interest in the entity. Columns E through G are to be filled ONLY IF APPLICABLE. Codes for Column A apply ONLY to  
of Estates as follows: (H) Heirs. (B) Beneficiaries and (G) Grantors of Trust.

MEMBER'S NAME A	SSN OR ID NO. B	PERCENT INTEREST C	SALARY D	BONUS E	POSITION F

any member that is an individual be under 18 years of age as of March 1 of the program year? (If yes, give name, date of birth,  
parent or guardian's name, address and ID No.)

YES NO

are minors involved, do the minor's parents or guardian have farming interests? (If yes, explain on an attached sheet. Indicate  
each individual listed the State and county for each interest and also any entity and ID No. in which they have a farming interest, if  
interest is other than as an individual.)

any member, that is an individual, related to any other member? (If yes, give name and relationship.)

partnership agreement, corporation charter and articles of incorporation, trust agreement or estate papers been furnished? (If  
furnished the applicable papers.)

any of the individuals, their spouses, or minor children have farming interests not operated by this entity? (If yes, explain on an  
attached sheet. Include name, ID No., relationship, and whether an adult or minor. Indicate for each individual listed any State  
county interests and also any entity and ID No. in which they have an interest, if the interest is other than as an individual.)

entity's farming operation this year, how and from whom is the following obtained?  
(Reverse side for additional space.)

TOTAL

OWNED ☐ LEASED ☐ (If leased, complete the following:)

NAME 1	RELATIONSHIP 2	CROPLAND ACRES 3	\$ PER ACRE OR % CROP SHARE 4





MENT OWNED ☐ LEASED FROM OTHERS ☐ LEASED TO OTHERS ☐ (If leased, complete the following:)

NAME	RELATIONSHIP	CROPLAND ACRES	\$ PER ACRE OR % CROP SHARE
1	2	3	4

AGEMENT

NCING (ALSO SPECIFY WHAT IS USED FOR SECURITY AND WHO SIGNED LOANS.)

W was the land being worked this year by this entity worked last year?

MARKS

16. CERTIFICATION

fy that all the information entered above is true and correct.

TURE

TITLE

DATE



# FARM OPERATING PLAN FOR PAYMENT LIMITATION REVIEW FOR JOINT VENTURE OR GENERAL PARTNERSHIP

PL 99-198 for wheat, feed grain, upland and ELS cotton, rice, and conservation reserve; Act of April 27, 1936, c. 85, as amended for ACP; PL 95-334 for ECP; and PL 95-313 for FIP authorize the collection of the following data for applying payment limitations. It is needed to avoid payments that exceed limitations. Furnishing this data is voluntary; however, without it we may be unable to establish your maximum eligibility for program payments. The data may be furnished to any agency responsible for enforcing the limitations.

NAME AND ADDRESS OF PRODUCER (Entity)

3. TYPE OF ENTITY (Check one)

5. DATE ENTITY FORMED

A. JOINT VENTURE ☐B. GENERAL PARTNERSHIP ☐

6. COUNTY(IES)

4. SSN OR ID NO.

List all members having an interest in the entity. Columns D through F are to be filled ONLY IF APPLICABLE.

MEMBER'S NAME A	SSN OR ID NO. B	PERCENT SHARE C	SALARY D	BONUS E	POSITION F

Will any member that is an individual be under 18 years of age as of March 1 of the program year? (If yes, give name, date of birth, and parent's name, address and ID No.)

YES NO

If there are minors involved, do the minor's parents or guardian have farming interests? (If yes, explain on an attached sheet. Indicate for each individual listed the state and country for each interest and also any entity and ID No. in which they have a farming interest, if the interest is other than as an individual.)

Is any member that is an individual related to any other member? (If yes, give name and relationship.)

Does any member rent or lease land or equipment to the entity? (If yes, complete the following.)

MEMBER'S NAME A	CROPLAND ACRES B	\$ PER ACRE OR % CROP SHARE C	EQUIPMENT RENTAL RATE D

Has a copy of this entity's written agreement been furnished? (If no, furnish one, if applicable.)

Do any of the individuals, their spouses, or minor children have farming interests not operated by this entity? (If yes, explain on an attached sheet. Include name, ID No., relationship, and whether adult or minor. Indicate for each individual listed the state and country for each interest and also any entity and ID No. in which they have a farming interest, if the interest is other than as an individual.)

What contribution is each member making to the entity? (List percentage below.)

MEMBER'S NAME A	CAPITAL B	LAND C	EQUIPMENT D	LABOR E	MANAGEMENT F

How is financing of the entity obtained? (Also, specify what is used for security and who signed loans.)





**MARKS**

CERTIFICATION. I certify that all the information entered above is true and correct. (All members must sign)			
SIGNATURE	DATE	SIGNATURE	DATE



D. MINOR CHILDREN.

1. Background: Currently, minor children (17 years or younger) may be considered to be a separate person from their parents if they meet certain conditions, such as producing on a farm in which the parents have no interest, establishing and maintaining a separate residence and personally carrying out the actual farming operations, or having a farming operation as the beneficiary of an irrevocable trust with ownership of the property being vested in the trust or the minor. Because of this rule, minor children are establishing residence with other relatives in order to be considered as a separate person, and irrevocable trusts are being used to create separate persons.

2. Proposal: Combining husband, wife and minor children. Husband, wife and minor children would be considered to be one person, except that minors who live and farm independently may be considered to be a separate "person". The provisions under which one can qualify as an independent minor would be tightened to require that minors maintain their own household separate from their parents and personally carry out the actual farming operations on the farm for which there is a separate accounting. The parent or guardian must take no part in the operation of the farm and own no interest in the farm or in any of the crop on the farm. All minors who are the beneficiaries of any trust or





estate will be combined with their parents.

E. SUBSTANTIVE CHANGE.

1. Background: Before the number of persons in a farming operation can be increased through some type of restructuring, the regulations require that "[a]ny change in farming operations that would otherwise serve to increase the number of persons for application of the payment limitation must be bona fide and substantive." Examples of a substantive change provided in the regulations include an increase or decrease in the size of the farm or allotment, a change from a cash lease to share lease or vice versa, and dissolution of an entity such as a corporation or partnership.

Although this requirement has prevented many producers from evading the maximum payment limitation through the utilization of fictitious arrangements, it needs to be revised to further ensure that only bona fide changes in farming operations are recognized.

2. Proposal: Revise the examples provided in the regulations to ensure that--

(a) a decrease in the size of a farming operation does not qualify as a substantial change for the purpose of increasing the number of persons on the



farm;

(b) if the "substantial change" in the operation is an increase in the size of the operation, such size increase must bear a reasonable relationship to the number of persons being added to the operation; and

(c) a change from cash to share rent would only serve as justification for the owner of the land to be added as another person in the farming operation.

3. Example:

CORPORATION X

A	F
B	G
C	H
D	I
E	J

1987

CORPORATION X farms Blackacre (500 acres cotton)

A farms Blueacre (500 acres cotton)

B farms Greenacre (500 acres cotton)

-Result in 1987 is 3 "persons" for the purpose of applying the payment limitation.

1988

-CORPORATION X is dissolved and assets distributed to stockholders. A new ten member partnership is formed as follows:

Partnership Y

A	F
B	G
C	H
D	I
E	J

-The new partnership will farm Blackacre, Blueacre, Greenacre and will





also farm Whiteacre (225 acres cotton).

- Assume that 225 acres of cotton will generate \$50,000 in payments.
- Assume a statutory payment limitation of \$50,000.
- Assume that all members would be considered to be actively engaged in farming.

RESULT:

- There could be a maximum of 4 "persons" for 1988.
  - But for the addition of the 225 acre farm, Whiteacre, the same persons will be farming the same land for 1988. Because 225 acres will normally generate only \$50,000 in payments, this addition only justifies an increase of 1 person over the 1987 determination.
- 

F. CUSTOM FARMING.

1. Background. Custom farming is defined in the regulations as the performance of services on a farm (e.g., land preparation and cultivation) for hire with remuneration on a unit of work basis. However, harvesting of crops or applying chemicals by firms regularly engaged in such business is not considered to be custom farming for the purpose of applying the limitation. Any person performing custom farming will be linked to the recipient of the services unless (1) the compensation is paid at a customary rate and is not dependent upon the amount of the crop produced and (2) the person performing the custom farming has no interest in the crop on the farm, in the allotment on the farm, or in the farm as landowner, landlord, mortgage holder, trustee, lienholder, guarantor, agent, manager, tenant, sharecropper, or any other similar capacity. Likewise, a person having more than a 20% interest in any legal entity performing custom farming will be linked to the



recipient of the services unless the above stated requirements are met.

The interest trigger is not low enough to effectively discourage producers from creating additional persons. Five producers can currently organize a custom farming operation to farm those producers' land and land leased or owned by corporations in which those persons have an interest and all the producers and the corporations would be separate persons.

2. Proposal: Lower the percentage trigger level from a 20% interest to any interest in the custom farming entity. Remove the exception for custom harvesting and chemical application.

This revision would discourage the use of custom farming to avoid the application of the payment limit. Entities which engage in custom farming would not be affected as long as they (a) have no interest in the crop or the farm and (b) are paid at the customary level.





IV. A BILL TO PROVIDE FOR THE FAIR AND EQUITABLE APPLICATION OF THE  
MAXIMUM LIMITATION ON FARM PROGRAM PAYMENTS THAT MAY BE RECEIVED BY  
A PERSON.



A BILL

To provide for the fair and equitable application of the maximum limitation on farm program payments that may be received by a person.

Be it enacted by the Senate and the House of Representatives in Congress assembled, That section 1001(5) of the Food Security Act of 1985 is amended by striking subparagraph (B) and inserting in lieu thereof the following new subparagraphs (B), (C), and (D):

"(B) In applying the limitation provided for by this section, the Secretary shall--

"(i) provide for similar treatment of all entities;

"(ii) except as provided in clause (iii), determine the amount of payments that may be received by any entity based upon the number of members of the entity who are determined to be actively engaged in farming;

"(iii) consider any entity that is conducting a farming operation independently of all of its members to be a separate person;

"(iv) attribute all payments received by an entity to the members of the entity that have an interest in the entity, such attribution to be based upon the member's interest in the entity; and

"(v) consider an individual or entity to be actively engaged in farming if such individual or entity has made a significant





contribution (determined based upon the total value of the farming operation) of (I) land, cash, or equipment, and (II) labor or management to the farming operation.

"(C) For the purpose of this section the term 'entity' means a corporation, trust, estate, limited partnership, general partnership, joint venture, charitable organization and, except as provided in subparagraph (A), any other entity or association.

"(D) The Secretary may determine not to attribute payments to a member of an entity as provided for in subparagraph (B) (iv) if it is determined that--

"(i) such member's interest in the entity is less than 10 percent; and

"(ii) attribution of such payments to such member would have little or no impact on the implementation of the limitation provided for by this section.".

SEC. 2. The amendments provided for by this act shall be effective with respect to the 1988 through 1990 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, and honey.



V. REVIEW OF AMENDMENTS TO SECTION 1001 OF THE FOOD SECURITY ACT OF 1985 MADE BY SECTION 108 OF THE JOINT RESOLUTION MAKING APPROPRIATIONS FOR GOVERNMENT AGENCIES FOR THE FISCAL YEAR 1987 (P.L. 99-500 and P.L. 99-591).

A maximum payment limitation for commodity programs was first mandated by section 101 of the Agricultural Act of 1970 (P.L. 91-524). The 1970 Act limited payments to \$55,000 per person under each of the wheat, feed grain and upland cotton programs for the 1971 through 1973 crops. There were a number of payments authorized under the 1970 Act including land diversion payments, wheat certificate payments, and other payments which were based upon specified prices and parity prices.

The Agriculture and Consumer Protection Act of 1973 (P.L. 93-86) made drastic reductions in the maximum payment limitation -- down to \$20,000 per person for the combined wheat, feed grain, and upland cotton programs. The 1973 Act instituted the concept of established ("target") prices and deficiency payments. The 1973 Act limited combined deficiency and diversion payments for the 1974 through 1977 crops.

The Food and Agriculture Act of 1977 (P.L. 95-113) increased the maximum payment limitation but retained the limitation





for the combined wheat feed grain, and upland cotton programs. The 1977 Act limited combined deficiency and diversion payments on wheat, feed grains and upland cotton to \$40,000 for the 1978 crops and \$45,000 for the 1979 crops. It also limited rice deficiency payments to a separate total of \$52,250 per person for the 1978 crop and \$50,000 per person for the 1979 crop. The 1977 Act provided for a combined limitation of \$50,000 per person on the total amount of payments which could be received for one or more of the annual programs for each of the 1980 and 1981 crops of wheat, feed grains, upland cotton and rice. Minimum loan and purchase rates were provided for wheat and feed grains, but the 1977 Act also provided discretionary authority to reduce the loan and purchase rates to aid export competitiveness. In the event there was any such loan and purchase rate reduction, compensation was to be made available by increasing established price (i.e., deficiency) payments. Such an increase was excluded from any maximum payment limitation.

The Agriculture and Food Act of 1981 (P.L. 97-98) continued the \$50,000 maximum payment limitation on combined deficiency and diversion payments for the 1982 through 1985 crops. For the first time, a separate \$100,000 maximum payment limitation was placed on disaster payments. Both limitations applied to combined payments on wheat, feed grains, upland cotton and rice. In a manner similar to that



provided for in the 1977 Act, discretionary authority was provided for reductions in loan and purchase rates reductions with corresponding increased in deficiency payments that were not subject to the maximum payment limitation. The Extra Long Staple Cotton Act of 1983 amended the 1981 Act to make payments which were available under the Extra Long Staple Cotton Program subject to the maximum payment limitation.

The Food Security Act of 1985 (P.L. 99-198) retained the same combined maximum limitation of \$50,000 for deficiency and diversion payments and \$100,000 for disaster payments for the 1986 through 1990 crops of wheat, feed grains, upland cotton, extra long staple cotton, and rice. However, the potential for direct payments to an individual farmer was increased substantially by the 1985 Act, and many types of payments were not subject to any maximum payment limitation.

The largest payments not subject to a maximum payment limitation are the additional wheat or feed grain deficiency payments which result from the downward adjustment in the loan and purchase rates, the same as authorized by the 1977 and 1981 Acts. These payments are sometimes referred to as the "Findley payments."





However, the 1985 Act authorized greater reductions in the loan and purchase rates than the 1977 and 1981 Acts, creating much higher exposure for deficiency payments which are not subject to a maximum payment limitation. For example, the average annual deficiency payment exposure for the 1982 through 1985 crops of corn was about 40 cents per bushel. The average maximum exposure for the 1986 through 1990 crops of corn is about \$1.20 per bushel.

Besides the Findley payments, the 1985 Act provided that other direct payments were not subject to the \$50,000 maximum payment limitation. These include the following:

- gains realized by farmers from marketing loans under the upland cotton and rice programs when farmers are permitted to repay nonrecourse price support loans at less than the original loan principal.
- loan deficiency payments when farmers agree to forego obtaining nonrecourse loans and are paid the difference between the established loan rate and the lower repayment rate under a marketing loan program.
- inventory reduction payments which are available if implemented by USDA. Under this program, producers must comply with only one-half of the announced acreage reduction level and agree to forego obtaining any nonrecourse loans and deficiency payments to which they would otherwise be entitled. In return, they receive



the equivalent of a loan deficiency payment, made available in the form of commodities. Inventory reduction payments have not been made available for the 1986 or 1987 crops.

- payments representing compensation for recourse adjustment.

Clearly, the 1985 Act increased the exposure to large payments, especially when no maximum limitation was placed upon several forms of direct payments. Legislation enacted last October 30 (P.L. 99-500 and P.L. 99-591) amended the 1985 Act to impose an overall maximum limitation of \$250,000 on combined direct payments. This maximum limitation of \$250,000 per person includes the following:

- \$50,000 limitation on regular deficiency payments and land diversion payments
- gains realized from marketing loan repayments
- loan deficiency payments
- inventory reduction payments
- Findley deficiency payments
- disaster payments
- payments representing compensation for resource adjustment
- outstanding balances of price support loans for honey





The \$250,000 payment limitation may be increased if the Secretary of Agriculture determines that the limitation will increase loan forfeitures or will discourage participation in the annual acreage reduction programs. Forfeitures might increase, particularly in upland cotton and rice, if larger operators reach the maximum limitation as a result of gains realized from repayments under the marketing loans. There would be no incentive to continue repaying marketing loans if the gain from doing so could not be realized. In the case of wheat or feed grains, the Findley payments could reach the maximum limitation amount, and large operators might decline to participate in those commodity programs if they determine that they cannot receive the entire Findley payments.

The \$250,000 payment limitation becomes effective with respect to the 1987 crops. Therefore, no data are available upon which to base a determination either as to budget savings or as to whether the limit needs to be adjusted to avoid forfeitures or improve program participation. The period for producers to enter into contracts to participate in the 1987 commodity programs is now in progress. There are no interim data available to indicate how the new limitation might be affecting enrollments in the wheat and feed grain programs.



When the \$250,000 payment limit was enacted, USDA estimated that budget savings would be only about \$10 million for the 1987 crop. There is no reason to change that estimate until new data become available. For the 1987 crops, about 4,000 of acres of corn or 10,000 acres of wheat for each "person" would be needed to generate \$200,000 in Findley payments. The acreage required to earn \$200,000 in Findley payments for corn or wheat is so large that virtually no farms would have payments reduced.

For upland cotton, about 3,000 acres for each "person" would be needed to generate \$200,000 in gains realized from repayments of marketing loans gains. Of the farms on which there is enough base acreage to meet the 25-percent acreage reduction requirement and to plant 3,000 acres of upland cotton, the planted acreage for each "person" on the farms is believed to average only about 500 acres.

For rice, about 1,000 acres for each "person" would be needed to generate \$200,000 gains realized from the repayment of marketing loans. Of the farms on which there is enough base acreage to meet the 35-percent acreage reduction requirement and to plant 1,000 acres of rice, the average planted acreage for each "person" is thought likely to be less than 200 acres.





It appears that the limit of \$250,000 does not appreciably reduce payments to producers with large farming operations, and, thereby, lower budget outlays to any significant extent. In order to limit payments to producers with large farming operations and reduce budget outlays, it is evident that more stringent requirements for establishing and administering maximum payment limitations are needed. In this regard, the President's budget for fiscal year 1988 proposes a \$50,000 limit on all direct payments made to producers.



VI. APPENDICES.





## SECTION 1001 OF THE FOOD SECURITY ACT OF 1985, AS AMENDED.

Sec. 1001. Notwithstanding any other provision of law:

(1) For each of the 1987 through 1990 crops, the total amount of deficiency payments (excluding any deficiency payments described in paragraph (2) (B) (I) (iv) of this section) and land diversion payments that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed \$50,000.

(2) (A) For each of the 1987 through 1990 crops, the total amount of payments set forth in subparagraph (B) that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 for wheat, feed grains, upland cotton, extra long staple cotton, rice, honey, and (with respect to clause (iii) (II) of subparagraph (B)) other commodities, when combined with payments for such crop described in paragraph (1), shall not exceed \$250,000.

(B) As used in subparagraph (A), the term "payments" means--

(i) any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(ii) any disaster payments under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

(iii) (I) any gain realized by a producer from repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a) (5), 105C(a) (4), 103A(a) (5), 101A(a) (5), or 201(b) (2), respectively, of the Agricultural Act of 1949, or (II) any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level than the original loan level established under the Agricultural Act of 1949;

(iv) any deficiency payment received for a crop of wheat or feed grains under section 107D(c) (1) or 105C(c) (1), respectively, or the Agricultural Act of 1949 as the result of a reduction of the loan level for such crop under section 107D(a) (4) or 105C(a) (3) of such Act;

(v) any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or





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